

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 23-0165-INV

Procedure for filing 30 V.S.A. § 22 annual reports with the Public Utility Commission

Order entered: 01/18/2023

ORDER WAIVING COMMISSION RULES 2.226(A)(3) AND 2.226(B)(3)
WHEN FILING 30 V.S.A. § 22 ANNUAL REPORTS WITH THE COMMISSION

I. INTRODUCTION

Under 30 V.S.A. § 22, each utility must file an “annual report . . . with the Department of Public Service on the form prescribed by it and containing such information as may be necessary to enable the Department to determine the amount of the [gross receipts] tax payable.” Vermont Public Utility Commission (“Commission”) Rule 3.100 further provides:

Each utility shall file with the Commission one copy of the annual report which it is required to submit to the Department of Public Service. The copy shall be filed with the Commission at the same time the report is submitted to the Department.

On January 2, 2019, the Civil Division of the Washington County Superior Court held that annual reports filed by telecommunications companies “fall squarely within the definition of a tax return” and “are wholly exempt from public disclosure.”¹ The Superior Court further held that 1 V.S.A. § 317(c)(6) “exempts the entire return and does not authorize the Department to disclose selected portions.”²

Since that decision, the Commission has treated all Section 22 annual reports as containing potentially confidential information. In light of this, in 2019, the Commission’s general counsel provided guidance on the process for filing annual reports with the Commission.³

¹ *Bell Atl. Mobile Systems et al. v. Vermont Dept. of Public Serv.*, Docket Nos. 629-11-17 Wncv, 630-11-17 Wncv, 631-11-17 Wncv, 636-11-17 Wncv, 639-11-17 Wncv, slip op. at 4 (Jan. 2, 2019) (relying on 1 V.S.A. § 317(c)(6), which exempts tax returns from public disclosure under the Vermont Public Records Act).

² *Id.*

³ Memorandum from Kyle Landis-Marinello, General Counsel, to All Filers of Annual Reports Under 30 V.S.A. § 22, dated March 20, 2019.

However, on January 18, 2023, a revised version of Commission Rule 2.000 will take effect. Section 2.226 of the revised Rule 2.000 includes a confidential information protocol that specifies, among other items, the process for filing information that a party asserts to be confidential. Thus, the revised Commission Rule 2.000 will supersede the 2019 guidance for filing Section 22 annual reports with the Commission.

However, in light of the unique situation related to annual reports required to be filed under 30 V.S.A. § 22, we find it appropriate to modify two of the requirements contained in Commission Rule 2.000 for the filing of assertedly confidential documents.

Under Commission Rule 2.226(A)(3), to assert confidentiality of a document, the filing must include either:

- (a) a cover letter identifying the date and case number of the specific Commission order, statute, court order, or other State or federal agency decision that recognizes the confidentiality of the document, or
- (b) a motion for confidential treatment.⁴

In addition, Commission Rule 2.226(B)(3) requires (in relevant part) that:

Whenever a party files an assertedly confidential document, that party must simultaneously file a public, non-confidential version of the document in ePUC, unless the party asserts that the entirety of the document is confidential (in which case a document making that allegation must be filed in ePUC).⁵

Annual reports required to be filed under 30 V.S.A. § 22 are readily recognizable as such because they are filed on forms developed by the Department. For these standard, annual filings, it would be administratively inefficient to require each utility to file with the report a separate cover letter identifying the Washington County Superior Court decision that is the reason the Commission treats the annual reports as containing potentially confidential information. It would also be administratively inefficient to require each utility to file in ePUC a document asserting that the entirety of the annual report is confidential. Therefore, effective January 18, 2023, we are waiving the filing requirements of Commission Rule 2.226(A)(3) and 2.226(B)(3) for the 30 V.S.A. § 22 annual reports.

Starting January 18, 2023, the Section 22 annual reports should be filed with the Commission as provided in Commission Rule 2.226(B)(2)—by email with the clerk or in paper,

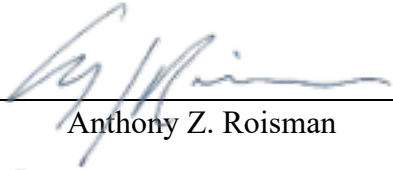
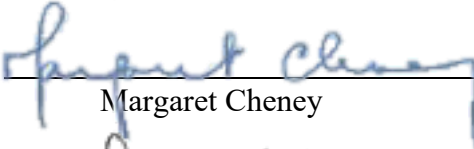
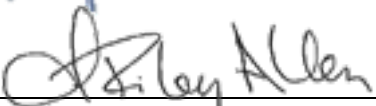
⁴ Commission Rule 2.226(A)(3) (effective January 18, 2023).

⁵ Commission Rule 2.226(B)(3) (effective January 18, 2023).

with the word “Confidential” as the first word of the subject line. In addition, we direct that, if filed by email, the words “Annual Report” must be included in the subject line.

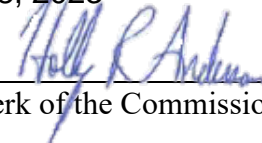
SO ORDERED.

Dated at Montpelier, Vermont, this 18th day of January, 2023.

 _____)) PUBLIC UTILITY)) COMMISSION) OF VERMONT
Anthony Z. Roisman)	
_____)	
 _____)) COMMISSION) OF VERMONT
Margaret Cheney)	
_____)	
 _____)) OF VERMONT
J. Riley Allen)	

OFFICE OF THE CLERK

Filed: January 18, 2023

Attest: 
_____)
Clerk of the Commission

Notice to Readers: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Commission (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: puc.clerk@vermont.gov)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Commission within 30 days. Appeal will not stay the effect of this Order, absent further order by this Commission or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Commission within 28 days of the date of this decision and Order.

PUC Case No. 23-0165-INV - SERVICE LIST

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(for Vermont
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PUC email list